



hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: July 28, 2006

Signature:   
(Randall G. Rueth)

Docket No.: 30320/15121  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Michael A. Brown et al.

Application No.: 10/628,526

Confirmation No.: 4307

Filed: July 28, 2003

Art Unit: 2627

For: METHODS AND APPARATUS FOR  
DETERMINING THE STATE OF A  
VARIABLE RESISTIVE LAYER IN A  
MATERIAL STACK

Examiner: Kim Kwok Chu

**RESPONSE TO RESTRICTION REQUIREMENT**

MS Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed June 29, 2006, Applicant hereby elects without traverse claims 1-12 and 20-38 from Group 1 for continued examination. The Examiner has required restriction between claims 1-12, and 20-38, Group 1 drawn to an electron beam recording means and claims 13-19, Group 2 drawn to a transformer means and its structure.

The effect of the Patent Office issuing the restriction requirement is that the Patent Office admits that the claims of, for example, Group I are patentably distinct over the claims of Group II. MPEP §802.01 states that distinctness for a restriction requirement means that two or more subjects as claimed "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER." (emphasis in original) The effect of the restriction requirement is that the Patent Office admits that the claims of the elected groups are patentable over any disclosure of the claims of the non-elected groups, and vice versa.

The patentability position is required for entry of the restriction requirement by the Patent Office. Thus, the applicants can and will rely upon this position during examination of this application and any continuing or divisional applications. If this position is not to be taken by the Patent Office, then the applicants request that the restriction requirement be withdrawn.

Dated: July 28, 2006

Respectfully submitted,

By 

Randall G. Rueth

Registration No.: 45,887

MARSHALL, GERSTEIN & BORUN LLP

233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicant